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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,939	12/29/2000	Bruce L. Gibbins	01005-0121 (41946-251368)	9231
23370	7590	05/17/2004	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET SUITE 2800 ATLANTA, GA 30309			GHALI, ISIS A D	
			ART UNIT	PAPER NUMBER
			1615	19

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/752,939

Applicant(s)

GIBBINS ET AL.

Examiner

Isis Ghali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 21-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The indicated allowability of claims 1-12 and 21-33 is withdrawn in view of the newly discovered reference(s) to Gilchist et al. Rejections based on 112 second paragraph rejection and on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 and 21-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "oxygen-rich" that does not set out the metes and bounds of the claim. Recourse to the specification does not define the expression "oxygen-rich". Clarification is requested.

4. Regarding claim 5, the claim fails to further limit the subject matter of the previous independent claim 1. Claim 5 recites that the oxygen is formed by *in situ* production of oxygen, which appears to be the same limitation as in claim 1 of "wherein the oxygen is generated in the matrix in the manufacture of the matrix". Thus, claim 5 does not further limit claim 1, especially the limitations in both claims are directed to process of making of the product of claims 1 and 5.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 1-12 and 21-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilchist et al., US 6,187,290 ('290) in view of Ladin, US 5,792,090 ('090).

The present claim 1 is directed to a product comprising matrix of polymer network dispersed therein non-gellable polysaccharide and closed cells containing oxygen.

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US '290 disclosed a product suitable for wound dressing made of foam comprising foam product comprising mixture of polyacrylamide and guar gum (abstract; col.4, lines 12-20; col.6, lines 18-19). The foam comprises gas entrapped into small bubbles therein forming closed cell foam (col.2, lines 26-32; col.3, lines 40-43). The foam formulation comprises active agents selected from antibacterial agents, such as chlorhexidine and silver; growth factor; and protein (col.4, lines 41-50; col.5, lines 5-10). The foam composition further comprises glycerol and water that claimed by applicants' as plasticizer and hydration agents; and silicone that claimed by applicants' as water loss control agent (col.2, line 34; col.7, line 11).

The difference between US '290 teachings and the present invention is that US '290 does not teach the gas entrapped in the foam to be oxygen. The limitation of generating the oxygen during manufacture of the matrix does impart patentability to the claims because the claims are directed to product not a process.

US '090 teaches wound dressing that supply oxygen to the wound for optimal healing and minimization of infection because the wound causes diffusion limited access and limits the oxygen supply to the wound (abstract; col.2, lines 28-31). The dressing comprises elements that react to generate oxygen that are hydrogen peroxide and catalyst such as such magnesium dioxide or enzymes (col.6, lines 6-26).

Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide closed cell foam comprising polymer network and polysaccharide with gas entrapped in the foam as disclosed by US '290, and replace the gas by oxygen as disclosed by US '090, motivated by the teaching of US '090 that

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the wound dressing that supply oxygen to the wound provides optimal healing and minimization of infection because the wound causes diffusion limited access and limits the oxygen supply to the wound, with reasonable expectation of having closed cell foam comprising polymer network and polysaccharide with the oxygen entrapped therein that provides optimal wound healing with minimal risk of infection.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-2, 21-33 have been considered but are moot in view of the new ground(s) of rejection.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Examiner  
Art Unit 1615

  
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